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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JUL 14 7 1995

In the Matter of	)	
	)	PP Docket No. 93-253
Implementation of Section 309(j)	)	
of the Communications Act-	)	
Competitive Bidding	)	
	)	
Amendment of the Commission's	)	GN Docket No. 90-314
Cellular PCS Cross-Ownership Rule	)	
	)	
Implementation of Sections 3(n) and 332	)	
of the Communications Act	)	GN Docket No. 93-252
Regulatory Treatment of Mobile Services	)	
	)	

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**COMMENTS OF  
GENERAL WIRELESS, INC.**

General Wireless, Inc. ("GWI"), by its attorneys, submits its comments in response to the Federal Communications Commission's ("FCC") Further Notice of Proposed Rule Making ("FNPRM") in the above-captioned proceeding.

**STATEMENT OF INTEREST**

GWI is a corporation founded by entrepreneurs with substantial experience in the wireless telecommunications industry. GWI plans to participate in the PCS block C 30 MHz Basic Trading Area auction ("C block auction") as a

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"Small Business."<sup>1</sup> Since its inception in late 1994, GWI has anxiously awaited the opportunity to participate in the C block auction. Accordingly, GWI has an interest in the outcome of this proceeding.

## COMMENTS

GWI commends the Commission's efforts to ensure that the C block auction will not be delayed any further despite the Supreme Court's decision to subject race-conscious measures to strict scrutiny in Adarand Constructors, Inc. v. Peña.<sup>2</sup> In particular, GWI commends the Commission for adopting and releasing the FNPRM only nine business days after of the Adarand decision. In order to reduce the likelihood of additional delays to the C block auction caused by legal challenges, the Commission's FNPRM proposes to eliminate all of its race- and gender-conscious broadband PCS measures applicable to C block applicants.<sup>3</sup>

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<sup>1</sup> See 47 C.F.R. § 24.720(1) and (2).

<sup>2</sup> 63 U.S.L.W. 4523 (U.S. June 12, 1995) (overturning Metro Broadcasting, Inc. v. FCC, 497 U.S. 547 (1990)), to the extent that it is inconsistent with the holding in Adarand). The Commission's C block rules were premised on the viability of Metro Broadcasting holding that "benign discrimination" is subject to a less onerous "intermediate scrutiny" test. See Second Report and Order, FCC No. 94-61, PP Docket No. 93-253, 9 FCC Rcd 2348 (1994).

<sup>3</sup> The C block auction was originally delayed by a stay imposed by the D.C. Circuit Court of Appeals in Telephone Electronics Corp. v. FCC, No. 95-1015, slip op., (D.C. Cir. Mar. 15, 1995) (order granting stay applicable to, among other things, all race- and gender-conscious broadband PCS rules applicable to the C block  
(continued...))

Now that the Commission has granted the 99 A and B block 30 MHz Major Trading Area PCS licenses, an important element in the ability of the future C block licensees to compete with the financially larger A and B block licensees and established cellular licensees is the timing of the C block auction. Therefore, although the proposed elimination of all race- and gender-conscious measures contained in the auction rules applicable to the C block applicants presents the Commission with a difficult policy decision, GWI supports the proposed rule changes as necessary because any alternative solution would likely result in further delays to the C Block auction.<sup>4</sup> This result would be untenable for all potential C block applicants because, as Commissioner Barrett stated in his separate statement to

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<sup>3</sup>(...continued)

applicants) ("TEC") and delayed a second time by the Adarand decision, which was released three days before the filing deadline for Short Form 175 applications.

<sup>4</sup> For example, if the Commission proceeded without changing its existing broadband PCS rules, it is likely that a party relying on Adarand and TEC would seek to delay and ultimately overturn the broadband PCS rules concerned. In addition, the Commission could develop a more comprehensive record through hearings, studies or other methods concerning the need for minority- and gender-conscious broadband PCS measures that could potentially survive Adarand's strict scrutiny test, but this option would require the Commission to delay the auction indefinitely as it develops such a record, and would not inoculate the rules from legal challenges.

the FNPRM, "the delay of the C block auction would [result] in the most devastating scenarios."<sup>5</sup>

The FNPRM proposes to change the race- and gender-conscious broadband PCS rules for the C block auction by either eliminating them entirely or broadening them to apply all financially qualified applicants (minority or non-minority, male or female) for the C block auction or eliminating them. For example, the FNPRM proposes to broaden the applicability of Section 24.709 of the Commission's Rules to make the 50.1/49.9% "control group" equity structure available to all C block applicants, rather than solely businesses owned by women and/or minorities. Similarly, the FNPRM proposes to broaden the applicability of Sections 24.711 and 24.712 of the Commission's Rules to improve the bidding credit percentages and installment payment terms for all financially qualified C block applicants to the levels that are currently only available to businesses owned by women and/or minorities. In addition, the FNPRM proposes to eliminate the exception to the affiliation rules contained in Section 24.720 of the Commission's Rules that excludes the gross revenues and total assets of financial affiliates controlled by

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<sup>5</sup> See FNPRM, Statement of Commissioners Andrew C. Barrett at 2. See also, Women, Blacks Back FCC Plan to Hold Wireless Auction Without Preferences, Wall Street Journal, B9 (June 23, 1995); accord, Letter to the Chairman, Federal Communications Commission, Washington, D.C. from Clance Peterson, President, Peterson County Communications (June 23, 1995) (stating, as a minority- and women-owned business, that the Commission should eliminate race- and gender-conscious measures in the broadband PCS rules to avoid any additional delays to the C block auction).

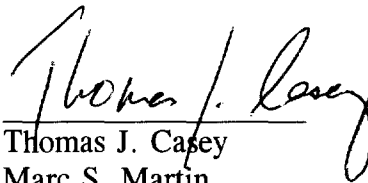
minority investors who are members of an applicant's control group. Because any other alternatives would likely result in additional delays to the C block auction, GWI supports the adoption of the FNPRM's proposals to revise the C block rules.

### CONCLUSION

For the aforementioned reasons, GWI strongly recommends that the Commission act expeditiously to adopt the proposals contained in the FNPRM as modified above, and thereby promote competition in the wireless telecommunications market and the rapid delivery of innovative services to the public by conducting the C block auction without further delay.

Respectfully submitted by:

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